

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

RONALD C. JESSE, JR. and SHIRLEY A.
JESSE, on behalf of NAGEL LUMBER
COMPANY, INC. GROUP MEDICAL,
PRESCRIPTION DRUG, DENTAL AND
SHORT TERM DISABILITY BENEFITS
PLAN,

Plaintiffs,

Case No.08 CV 400

v.

NAGEL LUMBER COMPANY, INC., and
CATHY A. NORDINE.,

Defendants.

ORDER & JUDGMENT

WHEREAS on November 19, 2008, the above-captioned action came on for hearing before the Court, the Honorable Barbara B. Crabb presiding, on Plaintiffs' Motion for Entry of Partial Default Judgment against Defendants Nagel Lumber Company, Inc., ("Nagel") and Cathy A. Nordine ("Nordine"),

WHEREAS the Court has considered the entire record in this action,

NOW THEREFORE, for the reasons stated on the record at said hearing, it is hereby ORDERED that Plaintiffs' Motion for Entry of Partial Default Judgment is GRANTED.

IT IS HEREBY DECLARED that Judgment shall be, and the same hereby is, entered against Defendants and in favor of Plaintiffs as follows:

- a. Defendants Nagel's and Nordine are hereby found jointly and severally liable for breach of their fiduciary duties to the Nagel Lumber Company, Inc. Group Medical, Prescription Drug, Dental and Short Term Disability Benefits Plan (the "Plan") pursuant to ERISA § 409, 29 U.S.C. § 1109, in amounts to be determined in subsequent proceedings;
- b. Defendant Nagel is hereby found liable to the Plan for its breach of its statutory obligation to fund the Plan, in an amount, subsequently to be determined, equal to the liabilities and damages that the Plan incurred as a result of said breach;
- c. As of November 19, 2008, based upon their breaches of their fiduciary duties, Defendants Nagel and Nordine hereby are removed from any further involvement in the management, administration and operation of the Plan;
- d. A hearing date will be set in order to appoint a receiver or trustee for the Plan under such terms as may be determined hereafter;
- e. Defendants Nagel and Nordine are hereby estopped from denying that any claims or benefits falsely represented as "paid" on any EOB sent to any participant or beneficiary were in fact covered and payable under the Plan in the amounts represented in said EOB;
- f. Plaintiffs are hereby permitted to proceed with discovery, through either of the defendants or through CMS, in order to identify other Plan participants and beneficiaries, other than the Jesses, to whom the defendants, through their agent, Claim Management Services, Inc. ("CMS"), sent EOBs falsely representing that payments for covered services had been made directly to providers when in fact the checks had been forwarded to Nagel and Nordine for future "disbursement" because there were not sufficient funds in the Plan to cover the payments, so that the plaintiffs may (1) notify such other participants and beneficiaries of the pendency of this suit; and (2)

ascertain the claims of the Plan against the defendants with respect to such other participants and beneficiaries;

- g. Plaintiffs shall be provided until March 31, 2009 to complete said discovery;
- h. After the completion of discovery, Plaintiffs shall be allowed until May 1, 2009 to amend their complaint to add any additional parties and claims against defendants; and
- i. Defendants are jointly and severally liable to the Plan on behalf of plaintiffs Ronald and Shirley Jesse in the amount of \$14,477.11, plus prejudgment interest the calculation of which shall be determined hereafter.

So Ordered and Declared this 5th day of December 2008.



Honorable Barbara B. Crabb
United States District Court
Western District of Wisconsin